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Attorneys for Plaintiffs and Counterclaim Defendants

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EPITRACKER, INC. and SERAPHINA
THERAPEUTICS, INC.,

Plaintiffs,

vs.

AGOURA HEALTH PRODUCTS, LLC
d/b/a GUNDRY MD and STEVEN R.
GUNDRY,

Defendants.

AGOURA HEALTH PRODUCTS, LLC
d/b/a GUNDRY MD,

Counterclaim Plaintiff,

vs.

EPITRACKER, INC., SERAPHINA
THERAPEUTICS, INC., and
STEPHANIE VENN-WATSON,

Counterclaim Defendants.

Case No. 2:23-cv-08772-JWH-E

Assigned to Hon. John W. Holcomb

**STIPULATED PROTECTIVE
ORDER**

DISCOVERY MATTER

Magistrate Judge Charles F. Eick

1. Purposes and Limitations

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

The entry of this Order does not preclude any Party from seeking a further order of this Court as appropriate. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

2. Good Cause Statement

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial in-

formation (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

3. Definitions

3.1 Action: this pending federal lawsuit, captioned *Epitracker, Inc. & Seraphina, Inc. v. Agoura Health Products, LLC d/b/a Gundry MD & Steven R. Gundry*, No. 2:23-cv-08772-JWH-E.

3.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

3.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

3.4 “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY” Information or Items: Disclosure or Discovery Material (regardless of how it is generated, stored, or maintained) including interrogatory responses, other discovery responses, deposition transcripts and exhibits or other written information produced in response

1 to discovery requested in this Action, or tangible things that in good faith a Party or
2 Non-Party reasonably believes to contain trade secrets, know-how, research and de-
3 velopment of products or formulations that have not been published, business plans
4 or forecasts, commercially sensitive information, and such additional categories as
5 may be reasonably agreed to by the parties upon request of a Party, disclosure of
6 which to another Party or Non-Party would create a substantial risk of serious harm
7 that could not be avoided by less restrictive means.

8 3.5 Counsel: Outside Counsel of Record (as well as their support staff).

9 3.6 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as “CONFIDEN-
11 TIAL” or “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY.”

12 3.7 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 3.8 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
18 as an expert witness or as a consultant in this Action; (2) is not a past or current
19 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is
20 not anticipated to become an employee of a Party or a Party’s competitor.

21 3.9 Non-Party: any natural person, partnership, corporation, association, or
22 other legal entity not named as a Party to this action.

23 3.10 Outside Counsel of Record: attorneys who are not employees of a party
24 to this Action but are retained to represent or advise a party to this Action and have
25 appeared in this Action on behalf of that party or are affiliated with a law firm which
26 has appeared on behalf of that party, and includes support staff.

1 3.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 3.12 Producing Party: a Party or Non-Party that produces Disclosure or Dis-
5 covery Material in this Action

6 3.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 3.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL, OUTSIDE
12 COUNSEL ONLY.”

13 3.15 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 **4. Scope**

16 The protections conferred by this Stipulation and Order cover not only Pro-
17 tected Material (as defined above), but also (1) any information copied or extracted
18 from Protected Material; (2) all copies, excerpts, summaries, or compilations of Pro-
19 tected Material; and (3) any testimony, conversations, or presentations by Parties or
20 their Counsel that might reveal Protected Material. Any use of Protected Material at
21 trial shall be governed by the orders of the trial judge. This Order does not govern
22 the use of Protected Material at trial.

23 **5. Duration**

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees other-
26 wise in writing or a court order otherwise directs. Final disposition shall be deemed
27 to be the later of (1) dismissal of all claims and defenses in this Action, with or
28

without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

6. Designating Protected Material

6.1 Exercise of Restrain and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards.

Indiscriminate designations are prohibited. Designations that are shown to have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

6.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced. Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY" (hereinafter the "Protected Material Legend"), to each page that contains protected material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins). A Party or Non-Party that makes original documents avail-
4 able for inspection need not designate them for protection until after the inspecting
5 Party has indicated which documents it would like copied and produced. During the
6 inspection and before the designation, all of the material made available for inspec-
7 tion shall be deemed “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY.”
8 After the inspecting Party has identified the documents it wants copied and pro-
9 duced, the Producing Party must determine which documents, or portions thereof,
10 qualify for protection under this Order. Then, before producing the specified docu-
11 ments, the Producing Party must affix the Protected Material Legend to each page
12 that contains Protected Material. If only a portion or portions of the material on a
13 page qualifies for protection, the Producing Party also must clearly identify the pro-
14 tected portion(s) (e.g., by making appropriate markings in the margins);

15 (b) for testimony given in depositions that the Designating Party identify the
16 Disclosure or Discovery Material on the record, before the close of the deposition
17 all protected testimony and must specify, for each portion the level of protection
18 being asserted;

19 Transcripts containing Protected Material shall have an obvious legend on the
20 title page that the transcript contains Protected Material, and the title page shall be
21 followed by a list of all pages (including line numbers as appropriate) that have been
22 designated as Protected Material and the level of protection being asserted by the
23 Designating Party. The Designating Party shall inform the court reporter of these
24 requirements;

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
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1 exterior of the container or containers in which the information is stored the Pro-
 2 tected Material Legend. If only a portion or portions of the information warrants
 3 protection, the Producing Party, to the extent practicable, shall identify the protected
 4 portion(s) and must specify the level of protection being asserted.

5 6.3 Inadvertent Failure to Designate. If timely corrected, an inadvertent
 6 failure to designate qualified information or items does not, standing alone, waive
 7 the Designating Party's right to secure protection under this Order for such material.
 8 Upon timely correction of a designation, the Receiving Party must make reasonable
 9 efforts to assure that the material is treated in accordance with the provisions of this
 10 Order.

11 **7. Challenging Confidentiality Designations**

12 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
 13 designation of confidentiality at any time that is consistent with the Court's Sched-
 14 uling Order.

15 7.2 Meet and Confer. The Challenging Party shall initiate the dispute reso-
 16 lution process under Local Rule 37.1 et seq.

17 7.3 The burden of persuasion in any such challenge proceeding shall be on
 18 the Designating Party. Frivolous challenges, and those made for an improper pur-
 19 pose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
 20 may expose the Challenging Party to sanctions. Unless the Designating Party has
 21 waived or withdrawn the confidentiality designation, all parties shall continue to af-
 22 ford the material in question the level of protection to which it is entitled under the
 23 Producing Party's designation until the Court rules on the challenge.

24 **8. Access and Use of Protected Material**

25 8.1 Basic Principles. A Receiving Party may use Protected Material that is
 26 disclosed or produced by another Party or by a Non-Party in connection with this
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1 Action only for prosecuting, defending, or attempting to settle this Action. Such Pro-
2 tected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the Action has been terminated, a Receiv-
4 ing Party must comply with the provisions of section 14 below (Final Disposition).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

- 12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
13 well as employees of said Outside Counsel of Record to whom it is rea-
14 sonably necessary to disclose the information for this Action;
- 15 (b) the officers, directors, and employees of the Receiving Party to whom dis-
16 closure is reasonably necessary for this Action;
- 17 (c) Experts (as defined in this Order) of the Receiving Party to whom disclo-
18 sure is reasonably necessary for this Action and who have signed the “Ac-
19 knowledgment and Agreement to Be Bound” (Exhibit A);
- 20 (d) the court and its personnel;
- 21 (e) court reporters and their staff;
- 22 (f) professional jury or trial consultants, mock jurors, and Professional Ven-
23 dors to whom disclosure is reasonably necessary for this Action and who
24 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
25 A);
- 26 (g) the author or recipient of a document containing the information or a cus-
27 todian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8.3 Disclosure of “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL ONLY” only to:

- (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (c) the court and its personnel;
- (d) court reporters and their staff;

- 1 (e) professional jury or trial consultants, mock jurors, and Professional Ven-
 2 dors to whom disclosure is reasonably necessary for this Action and who
 3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 4 A);
- 5 (f) the author or recipient of a document containing the information or a cus-
 6 todian or other person who otherwise possessed or knew the information;
- 7 (g) during their depositions, witnesses, and attorneys for witnesses, in the Ac-
 8 tion to whom disclosure is reasonably necessary provided: (1) the deposing
 9 party requests that the witness sign the form attached as Exhibit A hereto;
 10 and (2) they will not be permitted to keep any confidential information
 11 unless they sign the “Acknowledgment and Agreement to Be Bound” (Ex-
 12 hibit A), unless otherwise agreed by the Designating Party or ordered by
 13 the court. Pages of transcribed deposition testimony or exhibits to deposi-
 14 tions that reveal Protected Material may be separately bound by the court
 15 reporter and may not be disclosed to anyone except as permitted under this
 16 Stipulated Protective Order; and
- 17 (h) any mediator or settlement officer, and their supporting personnel,
 18 mutually agreed upon by any of the parties engaged in settlement discus-
 19 sions.

20 **9. Protected Material Subpoenaed or Ordered Produced in Other** 21 **Litigation**

22 If a Party is served with a subpoena or a court order issued in other litigation
 23 that compels disclosure of any information or items designated in this Action as
 24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL, OUTSIDE COUNSEL
 25 ONLY,” that Party must:

- 26 (1) promptly notify in writing the Designating Party. Such notification
 27 shall include a copy of the subpoena or court order;

1 (2) promptly notify in writing the party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification shall include
4 a copy of this Stipulated Protective Order; and

5 (3) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL, OUTSIDE COUN-
10 SEL ONLY” before a determination by the court from which the subpoena or order
11 issued, unless the Party has obtained the Designating Party’s permission. The Des-
12 ignating Party shall bear the burden and expense of seeking protection in that court
13 of its confidential material and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this Action to disobey a lawful di-
15 rective from another court.

16 **10. A Non-Party’s Protected Material Sought to Be Produced in**
17 **This Litigation**

18 10.1 The terms of this Order are applicable to Protected Material produced
19 by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL, OUTSIDE COUNSEL ONLY.” Such information produced by
21 Non-Parties in connection with this litigation is protected by the remedies and relief
22 provided by this Order. Nothing in these provisions should be construed as prohib-
23 iting a Non-Party from seeking additional protections.

24 10.2 In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s confi-
27 dential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that
2 some or all of the information requested is subject to a confidentiality agreement
3 with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this Action, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and

7 (3) make the information requested available for inspection by the Non-Party,
8 if requested.

9 10.3 If the Non-Party fails to seek a protective order from this court within
10 fourteen (14) days of receiving the notice and accompanying information, the Re-
11 ceiving Party may produce the Non-Party's confidential information responsive to
12 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
13 Party shall not produce any information in its possession or control that is subject to
14 the confidentiality agreement with the Non-Party before a determination by the
15 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
16 expense of seeking protection in this court of its Protected Material.

17 **11. Unauthorized Disclosure of Protected Material**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writ-
21 ing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
22 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and Agree-
25 ment to Be Bound" that is attached hereto as Exhibit A.
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12. Inadvertent Production of Privileged or Otherwise Protected Material

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

13. Miscellaneous

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

14. Final Disposition

After the final disposition of this Action, as defined in paragraph 5, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 5 (Duration).

1 STIUPULATED AND AGREED:

2 Dated: March 8, 2024

3
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Attorneys for Defendants and Counter-
claim Plaintiffs

19 **SIGNATURE ATTESTATION**

20 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that the content of
21 this document is acceptable to both signatories to this Stipulated Protective Order
22 and that I obtained authorization Josephine A. Brosas, attorney for Defendants-
23 Counterclaim Plaintiff Agoura Health Products and Defendant Stephen R. Gundry,
24 to affix her electronic signatures to this document.

25 Dated: March 8, 2024

26 By: /s/ Jeffrey S. Ginsberg
27 Jeffrey S. Ginsberg
28

ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: 3/8/24

/S/ CHARLES F. EICK

HON. CHARLES F. EICK
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on _____ [insert date] in the case of *Epitracker, Inc. & Seraphina, Inc., v. Agoura
 Health Products, LLC d/b/a Gundry MD*, No. 23-cv-08772-JWH-E. I agree to com-
 ply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose
 in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order. I further agree to submit to the jurisdiction of the United States District Court
 for the
 Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of
 this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this Stipu-
 lated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____